

Sl.24
14.08.2025
Court No.6
BP

C.O. 2962 of 2025

Sri Sandip Das
-versus-
Sri Prasanta Bhattacharya

Mr. Supriyo Chattopadhyay
Mr. Deborshi Chatterjee
... for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated July 28, 2025 passed by the learned Civil Judge (Junior Division), 3rd Court at Howrah in Title Suit No. 12 of 2006.

By the order impugned the application under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure praying for an order to recall the P.W.1 for further cross examination stood rejected.

The learned advocate appearing for the petitioner submits that the petitioner herein filed a suit against the present opposite party as well as the subsequent purchaser of the suit property. He submits that certain relevant questions were inadvertently not put to the P.W.1 during his cross examination for which the petitioner filed the application praying for recall of the P.W.1.

It is not in dispute that the defence of the petitioner against delivery of possession has been struck off for non payment of the arrear rent under the provisions of Section 7(3) of the 1997 Act. It is well settled that the defendant whose defence has been struck off has only a limited right to cross examine the plaintiff. The petitioner has cross examined the P.W.1 and the suit was fixed for argument. It was only when the suit was fixed for further argument the petitioner filed an application praying for recall of P.W.1 for cross examination.

After going through the questions proposed to be put to the P.W.1 upon recall this Court finds that the same are related to a different suit which the petitioner filed against the subsequent transferee. It is well settled that the Court with exercise of powers under Section 151 of the Code of Civil Procedure can allow the prayer for recall of a witness for the purpose of further evidence even after closure of evidence if the same is necessary for the purpose of rendering justice. As observed hereinbefore the proposed questions are not related to the instant suit. That apart this Court finds that the petitioner herein, whose defence has already been struck off, is trying to put his case by way of cross examination which the petitioner could not be permitted. The learned trial judge was right in rejecting such prayer for recall of P.W.1.

Accordingly, C.O. 2962 of 2025 stands dismissed.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)